IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 14 OF 2007

Smt. Chandralekha Jawahar Karangia
alias Chandralekha Jawahar Karangia
alias Baby Chandralekha Jawahar
Karangia alias Nutan Ashok
Suryavanshi, major, resident of
Om Vaikunth Building,
Sindhi Society, Block No.403,
4th Floor, Chembur, Mumbai – 71. ..... Petitioner.

V/s.

1) Shri Jahangir alias Jahangir
Kaikhushroo Karanjia, aged 72 years,
resident of Flat No.45, 7th Floor,
Madhuban Apartment,
Abdul Gafar Khan Road,
Worli, Mumbai Maharashtra.

2) Smt. Jayashreee J. Karangia
(deceased). ..... Respondents.

Mr. D. V. Patkar, Advocate for the petitioner.

Mr. Menino Pereira, Advocate for the respondent.

CORAM : S.A. BOBDE, J.

DATE : 22nd March, 2007.

ORAL JUDGMENT :

Heard. Rule, returnable forthwith. Heard by consent.

2. This writ petition is directed against the order dated 2.11.2006 of

the learned Civil Judge, Senior Division, Panaji. By the impugned order, the learned Civil Judge has refused to set aside the order directing that the suit will proceed ex parte against the petitioner who is the defendant there. Several points have been raised on behalf of the petitioner. However, the only substantial point is whether the petitioner has changed her addressed from Andheri (E) to Chembur and whether, therefore, the declaration that she is served is proper. According to the petitioner, she has changed her addressed sometime in the year 2004 to Chembur from Andheri (E). Therefore, it was not correct on the part of the Court to proceed under Order 5, Rule 9(5) to make a declaration that the petitioner was duly served. It appears that this contention was raised before the learned Civil Judge who, however, rejected the contention, inter alia, on the ground that in the Judgment dated 17.3.06 of the Director of Settlement & Land Records, the petitioner's address was shown as Andheri (E) and that she had not taken care to have the address changed. It appears that the learned Civil Judge has fallen into error here. The appeal, in which the Judgment was delivered, appears to have been filed in the year 2001. It may, therefore, not be proper to assume that had there been a change in address, the petitioner would have moved for having the address amended in the cause title of the pending appeal. In any case, as a matter of fact, the petitioner has stated on oath that there has been change in the address in the year 2004. This fact has been denied on behalf of the respondent. However, the respondent has not made any attempt to disprove it except to produce the Judgment of the Director of Settlement & Land Records at Panaji dated 17th

March, 2006 on which the Court has relied.

3. In this view of the matter and, in order to do substantial justice between the the parties, I consider it appropriate, to set aside the impugned order and remand the matter to the trial Court. The petitioner's application for setting aside the order to proceed ex parte stands allowed. The suit is directed to proceed. The petitioner may participate in the proceedings hereafter. Rule is made absolute in the above terms. Suit is expedited.

S.A. BOBDE, J.

ssm.